

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 96-89

December 23, 1996

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: B. Allan Benson, Acting Associate General Counsel

SUBJECT: Issues Under Holyoke Water Power Co.  
273 NLRB 1369 (1985)

In C.C.E., Inc., 318 NLRB 977 (1995), the Board found that the Respondent violated Section 8(a)(1) and (5) of the Act by not allowing access to its facility to the Union representing its employees. In finding a violation, the Board applied a balancing test set forth in Holyoke Water Power Co., 273 NLRB 1369 (1985). In a concurring opinion, Member Browning advocated a change in the Holyoke Water test. Member Browning would abandon the balancing test of Holyoke Water and instead find that the Union as exclusive representative of the employees stands in the shoes of employees because it is their agent for the purpose of bargaining and, therefore, the Union enjoys the same rights under Republic Aviation Corp., 324 U.S. 793 (1945), as employees.

The General Counsel is interested in possibly putting this issue to the Board and would like to see cases which raise this issue. Therefore, the Regions are to send to Advice all cases which involve the Holyoke Water issue. If, for other reasons, the Region does not believe it is appropriate to send such a case to Advice, they should consult directly with the Division of Advice.

B. A. B.

cc: NLRBU

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